

§ 955.4 Forwarding of appeals.

Upon receipt of a notice of appeal in any form, the contracting officer shall indicate thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board, and shall include a copy of the contracting officer's final decision if one has been issued. Following receipt by the Board of the notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be advised promptly of its receipt, and the contractor will be furnished a copy of these rules.

§ 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) *Duties of the respondent.* Within 30 days from receipt of the Board's docking notice, or such other period as the Board may order, the respondent's counsel shall file with the Board an appeal file consisting of all documents pertinent to the appeal and shall provide a copy to the appellant. The appeal file shall include:

(1) The claim and contracting officer's final decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file, the appellant shall supplement the appeal file by transmitting to the Board any documents not contained therein considered to be pertinent to the appeal, and shall furnish copies of such documents to Postal Service counsel.

(c) *Organization of appeal file.* Documents in the appeal file or supplement, as applicable, may be originals or legible copies thereof, and shall be arranged in chronological order where

practicable, numbered sequentially, tabbed, and indexed to identify the contents. Page numbering shall be consecutive and continuous from one document to the next, so that the complete file or supplement, as applicable, will consist of one set of consecutively numbered pages.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. The party filing with the Board a document as to which such a waiver has been granted, shall notify the other party at the time of filing that the document is available for inspection at the offices of the Board or of the party.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document. Unless otherwise provided by Board order, any such objection shall be made at least 10 days prior to a hearing or the date specified for settling the record in the event there is no hearing on the appeal. If timely objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 955.14 and 955.21.

§ 955.6 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Oral argument on the motion may be afforded on application of either party, in the Board's discretion, or on the Board's initiative. The Board may at any time and on its own initiative raise the issue of its jurisdiction to proceed with a particular case.

(b) A motion filed in lieu of an answer shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by Board order. Any other dispositive motion shall be filed as soon as practicable after the grounds therefor are known.

(c) Motions for summary judgment may be considered by the Board. However, the Board may defer ruling on a motion for summary judgment, in its discretion, until after a hearing or other presentation of evidence. Motions for summary judgment may be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief as a matter of law. The parties are to consider proceeding by submission of the case without a hearing in accordance with § 955.12, in lieu of a motion for summary judgment.

(1) Motions for summary judgment shall include a separate document titled *Statement of Uncontested Facts*, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to affidavits, declarations and/or documents relied upon to support such statement.

(2) The opposing party shall file with its opposition a separate document titled *Statement of Genuine Issues*. This document shall identify, by reference to specific paragraph numbers in the moving party's *Statement of Uncontested Facts*, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement, and support its opposition with references to affidavits, declarations and/or documents that demonstrate the existence of a genuine dispute.

(3) The moving party and the non-moving party shall each submit a memorandum of law supporting or opposing summary judgment.

(4) If, despite reasonable efforts, the opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may issue such other order as is just. The parties should not expect the Board to search the record for evidence in support of either party's position.

[74 FR 20592, May 5, 2009, as amended at 76 FR 37660, June 28, 2011]

§ 955.7 Pleadings.

(a) *Appellant*. Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon the appellant's request or on the Board's own initiative, the appellant's claim, notice of appeal or other document may be deemed to constitute the complaint if in the opinion of the Board the issues before the Board are sufficiently defined.

(b) *Respondent*. Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the respondent shall prepare and file with the Board an answer thereto, setting forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant, and shall serve the appellant with a copy. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Should the answer not be filed within the time required, the Board may, in its discretion, enter a general denial on behalf of the respondent, and the appellant shall be so notified.

(c) *Affirmative claims by the respondent*. Where an appellant has appealed an affirmative claim by the respondent asserted in a final decision by a Postal Service contracting officer, such as a termination for default or a Postal Service claim that a contractor owes the Postal Service money under a contract, the Board may order the respondent to file the complaint as described in § 955.7(a), and the appellant to file the answer as described in § 955.7(b).

[74 FR 20592, May 5, 2009, as amended at 76 FR 37660, June 28, 2011]